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PROHIBITION OF OPENING MAIL BY INTERNAL REVENUE SERVICE

Mr. LONG of Missouri. Mr. President, rarely before in my career, in local, State, or Federal Government, have I been so shocked, disgusted, and dismayed as during our current investigation of invasions of privacy of American citizens by Federal agencies.

Since the investigation started, we have learned more than a little about the snooping techniques employed by some of these agencies. Such snooping techniques include mail covers, peepholes, two-way mirrors, concealed tape recorders, and surreptitious transmitters and receivers.

These devices, along with other practices, have been used at times to invade not only the statutory rights of individuals, but also the rights guaranteed to the individual by the first, fourth, fifth, and sixth amendments of our Constitution.

Only recently it was discovered that the Internal Revenue Service has been seizing mail and opening it in an attempt to collect delinquent taxes. The seizures were not limited to mail that was second-, third-, or fourth-class mail or even business mail. First-class, personal mail was equally subject to seizure, many times having no relation to the individual's tax matters.

The Senate should know the authority IRS claims—and I repeat claims—to have for this practice. IRS claims their authority to seize first class mail and open it was given to them by none other than the Congress itself. According to IRS, we are responsible for this disgusting practice.

Yet, when asked to specify the explicit mandate of Congress, IRS renders an explanation so circuitous, so questionable, and so weighted down with irrelevances, half truths, that it reaches new heights in legal legerdemain. In truth, it is a perfect example of lifting oneself by a legal skyhook.

I cannot help but believe that the IRS knows as well as we know that we never intended for them to open first class mail.

How can it be otherwise? The purport of the IRS position on these mail levies—as they call them—is that Congress has authorized what would clearly seem to be unconstitutional activity, and for the sake of collecting taxes. Further, they must admit that in any event Congress has done so only implicitly, not explicitly.

That is, there is no expressed statutory mandate anywhere that requires, permits or intimates that Congress ordered IRS to levy upon and seize mail matter of any class. To say, as IRS does, that because Congress did not specifically exempt mail matter from the property subject to levy and seizure under title 26 U.S.C. 6334 that thereby Congress meant to include mail matter within the property subject to levy and seizure is, at best, highly questionable reasoning.

It would be less difficult to swallow such a position if it did not fly in the face of title 18 United States Code 1701, 1702, and 1703, and of the fourth amendment of the Constitution, and the decision of the Supreme Court in *Ex Parte Jackson*, 96 U.S. 727 (1877). In that case, the Supreme Court held that first-class mail is entitled to the same constitutional guarantees of the fourth amendment as is a man's other papers and possessions. As we all know, the fourth amendment requires a search warrant which is sworn to before a judge or Federal commissioner before any paper or property can be taken or even seen. I would like to quote briefly from that decision. At page 733—of 96 U.S.—Mr. Justice Field stated:

> Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection * * * as if they were retained by the parties forwarding them in their own domiciles. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. No law of Congress can place in the hands of officials connected with the postal service any authority to invade the secrecy of letters and such sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the fourth amendment of the Constitution.

It may also be of interest to the Senate, that there are no court decisions authorizing or recognizing the interpretation of 26 United States Code 6334 placed on it by the Internal Revenue Service. In other words, the only authority Internal Revenue Service has to levy upon and seize first-class mail and to open it, is the authority they themselves have constructed by a legal hammer and nail approach.

Indeed, if IRS's reasoning is to be followed to the letter, does the Senate realize that property such as crutches, Bibles, even human blood could be subject to levy and seizure to pay off delinquent taxes. These items are not specifically exempt from section 6334 either, and thus Congress must have meant to have them subject to the section, and thus able to be seized and sold to pay off taxes.

It may be that IRS has to use its ingenuity to collect all taxes due to the Government. But this does not mean that IRS can appropriate [illegible] practice unconstitutional methods to collect taxes or that it can practice such methods in face of possible violations of the criminal code of the United States.

Mr. President, today I introduce legislation, for reference to the proper committee, that will clarify beyond question the position of Congress in this matter. This bill would specifically exclude mail matter from the levy powers of the Internal Revenue Service.

It is of interest to note that both Postmaster General Gronouski and Secretary Fowler are giving their support to this legislation.

As I know that a number of my colleagues on both sides of the aisle have evinced an interest in cosponsoring this bill, I ask that it lie on the table for 2 calendar weeks so that Senators may study it and possibly join in sponsorship. I also ask unanimous consent that the bill be printed at this point in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD, and will lie on the table, as requested.

The bill (S. 1886) to prohibit opening of mail by the Internal Revenue Service, introduced by Mr. LONG of Missouri, was received, read twice by its title, referred to the Committee on Post Office and Civil Service, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6334(a) of title 26, United States Code, is amended by adding the new subsection (5) as follows:

"(5) Mail of all classes, except mail which (i) has been delivered by the Postal Service to a business or firm which has been seized by the Internal Revenue Service under sections 6331 or 7403(d) of this title, and (ii) which is clearly business, and not personal, mail. In cases of opening of mail delivered to a business or firm, the former owner or proprietor or designee thereof shall be afforded an opportunity to be present at such opening."

Mr. ERVIN. Mr. President, I wish to commend my colleague, the junior Senator from Missouri, for his prompt action in developing and introducing this measure designed to eliminate threats to and to safeguard the right to privacy guaranteed every American under the Constitution. The Senator from Missouri, who is chairman of the Subcommittee on Administrative Practice and Procedure, has recently conducted a series of hearings on the invasion of privacy by Government agencies. These hearings have focused public attention on some very insidious and dubious practices engaged in by governmental agencies. In so doing, these hearings have helped make the American public aware of the many ways in which their rights to privacy can be and are being threatened by their own [illegible] agencies.

This measure which was just introduced is directed at two of the many

dubious practices revealed by the subcommittee's hearings; namely, rerouting of letters by the Post Office Department and the opening of mail by the Internal Revenue Service. While I have not had an opportunity to examine as carefully as I would like every aspect of this bill at this time, I do want to register my approval of the thrust of this measure and my disapproval of the repugnant practices which it is designed to remedy.

Certainly, no agency of the Federal Government should arrogate to itself the power or authority to open an individual's letters without his consent, nor should the Post Office deliver such mail to anyone other than the person to whom the letter was addressed. And if such authority is implied by statute as has been argued, this statutory provision should be modified. It was against practices such as mail seizure, mail covers, lie detectors, electronic eavesdropping and other forms of snooping that our forefathers erected the bulwark of the Bill of Rights.

Under our Constitution and in the history of its interpretation, it is manifestly clear that the Federal Government is limited in its powers over the individual citizen. The powers withheld from government, or, to put it another way, the liberties guaranteed each citizen, were set forth to guarantee to the individual that those things personal to him shall at all times be free from Government interference. Virtually all rights enumerated in the Constitution contribute to the right to privacy if this right means integrity and the freedom of an individual.

As Americans, we need to refresh our minds and our hearts with the principles underlying these guarantees.

Far too often, we accept the invasions of our private lives and thoughts, the deprivations of our personal liberties, without so much as a backward glance. Accustomed to the demands of an orderly, efficient machine that is our Government, too often we succumb passively to bureaucratic shortcuts which result in invasions of the rights of individuals. And so inured are we that seldom is even one voice raised in protest until the evil is rampant.

A case in point is our Government's use of psychological personality tests in the hiring, firing, and promotion of employees. In many agencies, careers may hang on the answers to questions which leave no thought or dream or religious or moral belief unexamined, and which expose the personality of individuals to the curious eyes of all who have access to Government files.

The Subcommittee on Constitutional Rights has been studying this aspect of governmental invasion of privacy and the expertise of my colleague from Missouri, who is also a member of the subcommittee, will be invaluable to our study and hearings, which I shall schedule in the very near future.